

Before The
Federal Communications Commission
Washington, D.C. 20554

MAY 23 1994

In the Matter of)
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 PETITION FOR RULEMAKING TO ADAPT)
 THE SECTION 214 PROCESS TO THE)
 CONSTRUCTION OF VIDEO DIALTONE)
 FACILITIES)

To: The Commission

PETITION FOR RULEMAKING

Center for Media Education, Consumer Federation of America, the Office of Communication of the United Church of Christ, and the National Association for the Advancement of Colored People, National Council of La Raza, (collectively "Petitioners") by their attorneys and pursuant to Section 1.401 of the Commissions's rules, and Section 410(c) of the Communications Act of 1934, as amended, hereby petition for the expeditious commencement of a rulemaking to adapt the Section 214 application process for the better resolution of issues which have arisen in the context of applications to construct video dialtone facilities.

Section 214 of the Communications Act, which is geared to the promotion of efficiency in communications services,¹ is a poor vehicle for resolving the problems of equity and public policy that attend the creation of an entirely new, broadband

¹ For example, § 214 was intended to "prevent useless duplication of facilities with consequent higher charges to the users of [communications] service." A Legislative History of the Communications Act of 1934 at 40 (Max D. Paglin ed., 1989).

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system. Section 214 gives the public and video dialtone providers no guidelines for fair deployment beyond the requirement that applications include "a statement showing how the proposed construction, etc. will serve the public interest, convenience, and necessity."² However, in permitting video dialtone, the Commission expressly relied on § 214 applications as the method for handling unresolved video dialtone issues.³

One such issue is the redlining of minority or low income neighborhoods.⁴ Video dialtone proposals currently before the Commission reveal an unacceptable pattern of avoiding these areas. If the potential benefits of video dialtone are realized, those who are not connected to it may be hampered in their ability to take advantage of educational, employment, and even political opportunities. Neither the Clinton Administration nor the Commission want video dialtone to further divide the nation along economic, racial, or ethnic lines, but discriminatory deployment of video dialtone could have that result.

Petitioners therefore ask the Commission to amend § 214 as described below: First, an explicit and enforceable anti-

² 47 C.F.R. 63.01 "Contents of Applications."

³ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, 7 FCC Rcd 5781, 5819-5820 (1992).

⁴ Petitioners discuss this problem more thoroughly in a separate petition, filed concurrently. Another issue concerning the equitable construction of video dialtone is the extent that telephone companies are subsidizing it with funds collected from users of regular telephone service. See Joint Petition for Rulemaking and Establishment of a Joint Board, filed Apr. 8, 1993, by Consumer Federation of America and National Cable Television Association, Inc.

redlining provision should be added, and, second, the application process should be opened up to include significant public participation.

Although Petitioners believe discrimination is already prohibited under Sections 202(a) and 214 of the Communications Act,⁵ the marked tendency of video dialtone applications now before the Commission to redline poor and minority neighborhoods reveals the need for an explicit and enforceable anti-redlining clause. Specifically, at each phase of video dialtone deployment, providers should be required to make that service available to a proportionate number of lower income and minority customers. Further, those proposing new communications service facilities should be required to provide the Commission with the means of evaluating their compliance with the anti-redlining clause. The rules should therefore require all applications to include the relevant census tract data, e.g., race, ethnicity, and income statistics for each exchange (NNX) served. Applicants would also include census data for the metropolitan area in question, and explain to the Commission how the proposed facility would serve the public on a nondiscriminatory basis.

Because introducing a new, broadband service raises local public concerns over equitable deployment, the Commission should also amend the rules to require providers to give local public notice of their plans. The rule might be modeled on the rules

⁵ See Petition for Relief From Unjust and Unreasonable Discrimination in the Deployment of Video Dialtone Facilities filed concurrently, in which Petitioners request an interpretive rule to that effect.

requiring broadcasters filing applications to give repeated notice in a local newspaper.⁶ This model suggests itself because video dialtone, like broadcast television, delivers video programming. Telephone companies might also be required to include notice in their bills, since it is possible that the construction of video dialtone facilities will effect the rates for plain old telephone service. Notice placed in newspapers and bills would reach significantly more people than the Commission's Public Notice, where video dialtone applications are currently announced. It would also reach those with the greatest interest in the proposed facilities.

In addition to local public notice, the Commission should require applicants to hold a public hearing to disclose the area to be served, the areas not initially served, the schedule of wiring planned, and the kinds and approximate costs of services to be offered. A public comment period of sixty days would follow the hearings, and the Commission would have to consider the comments before approving an application. This simple procedure would assure the Commission and the public that video dialtone deployment, and the deployment of future communications systems, is fair and in the public interest.

Petitioners urge the Commission to initiate rulemaking procedures to amend the § 214 application process as described above without delay. Video dialtone may ultimately supplant

⁶ Broadcasters are required to give notice twice a week for two consecutive weeks in a daily newspaper of general circulation. 47 C.F.R. § 73.3580(c)(1).

existing broadcast, cable, and telephone service, as well as provide valuable new services. Thus it is extremely important that the Commission not permit video dialtone providers to exclude lower income or minority neighborhoods at any stage of deployment. The present application process is poorly equipped to help the Commission or the public screen proposals for discriminatory facilities. Therefore, to ensure equitable introduction of video dialtone, and appropriate public involvement in the communities to be served, petitioners request that the Commission expedite reform of the § 214 application process.

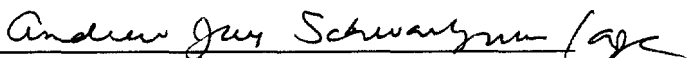
Respectfully submitted,



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